IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO. 1054 OF 1995
IN
Notice of Motion No. 5048 of 1992
in
S.C. SUIT NO. 6028 OF 1992.

Shri Sureshchandra Mantri ..... Appellant
vs.
Miss Chandrarekha Mantri ... ... Respondent.

Mr. G.S. Godbole with
Mr. Bharat Vaishnawa and A. B. Dubey
i/b. N.N. Vaishnawa for Appellant

Mr. M.P.S. Rao with Mr. Rai Mehta i/b. Crawford Bayley & co., for respondent

CORAM: D. G. KARNIK **J.**

DATE: 17/8/2006

ORAL JUDGMENT:

1. This appeal is directed against the judgment and order dated 16th June 1995 passed by the City Civil Court, Mumbai, in Notice of Motion No. 5048 of 1992 in S.C. SUIT NO. 6028 OF 1992.

2. The respondent filed a suit for injunction against the appellant apprehending that she would be illegally dispossessed from possession of the suit premises being part of flat no. 19, situate on the 2nd floor, Maheshwari Mansion, 'C' Wing, 34 Napensea

Road, Mumbai 400 026., in her occupation and possession. In the suit the respondent took out a motion for interim injunction restraining appellant from dispossessing her from the suit premises. The trial court, by its order dated 16th June, 1995 allowed the motion. That order was impugned in this petition.

3. Mr. Godbole, learned counsel appearing for the appellant stated before me that the appellant has no intention to dispossess the respondent, except by due process of law. He submitted that for eviction of the respondent the appellant had already filed a suit bearing Suit no. 7419 of 1992 in the City Civil Court at Bombay. As the said suit was dismissed for want of jurisdiction an appeal was filed therefrom being A.O. No. 753 of 1994 wherein the order of dismissal has been set aside and the suit has been ordered to be decided expeditiously. In the circumstances it appears that the appellant herein has no intention of dispossessing the respondent, except by due process of law and the apprehension of the respondent that she is likely to be dispossessed without due process of law is misconceived.

4. It appears that the relations between the parties are strained. They have filed suits, counter suits, appeals and contempt petitions against one another with a view to work out some interim arrangements an order was passed by this court on 29th September 1993 in terms of the minutes of the order in A.O. No. 813 of 1993. Under the said minutes of the order the respondent no.1 was allowed to occupy a portion of the flat,

consisting of a bed room, kitchen and a balcony, marked in red colour, and the respondent and his family members were allowed to occupy the remaining portion marked in green colour, in the plan annexed to the consent terms. The respective parties were allowed to use the WC and bath rooms attached to the premises in their occupation. In the circumstances the arrangement which was agreed between the parties in terms of which the consent order was passed on 29th September 1993 shall continue to operate between the parties till the disposal suit.

Appeal is disposed of in above said terms.

(D. G. KARNIK **J**)